HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI D.R. DESHMUKH, J.

Misc. Appeal No. 544 OF 2006.

APPELLANT: Defendant No.3		The New India Insurance Company Ltd., Bhilai, through its Divisional Manager, Divisional Office, Bilaspur. (C.G.)
	versus	
RESPONDENTS	1.	Shri Kushal Ram, 36 years, S/o. Shri Udal Singh. .
Claimant No.1		
Claimant No.2	2.	Shri Ravi Kumar, 16 years, S/o. Shri Kushal Ram.
Claimant No.3	3.	Shri Chabi Kumar, 14 years, S/o. Shri Kushal Ram.
Claimant No.4	4.	Shri Rameshwar, 10 years, S/o. Shri Kushal Ram.
		All resident of village Shakarwara, Tahsil & District – Dhamtari (C.G.). Respondents No.2 to 4 are minor, Through their guardian-father, Respondent No.1 Shri Kushal Ram Dhobi,
Defendant No.1	5.	Shri Gautam Ram, S/o. Shri Chedru Ram, S/o. Shri Chedru Ram, 28 years. - Driver-
Defendant No.2	6.	Shri Dharmendra Kumar, S/o. Shri Manrakhan Sinha. Both, Respondents No.5 & 6 are R/o. Shakarwara, Tahsil and District – Dhamtari (C.G.) -Owner-

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Present : Shri Prashant Jayaswal, learned Sr. Advocate with Shri Ali Asgar, learned counsel for the appellant.

ORAL ORDER
(Passed on 26th April, 2006)

The following oral order of the Court was passed by

S.R. Nayak, C.J.

In this appeal preferred by the New India Insurance Company Ltd., the only contention urged before us is that since the insured person violated the terms and conditions of insurance policy, the MACT ought not to have fastened the liability to pay compensation on the Insurance Company. Elaborating the contention, it was submitted by the learned counsel appearing for the Insurance Company that the deceased was traveling in the trolley as a passenger and not as a coolie whose services were engaged by the insured person to attend to agricultural operations in the field.

(2) We have perused the relevant pieces of evidence adduced in the case. They would clearly go to show that when the accident took place, the deceased was being carried to the filed as a coolie to attend to agricultural operations. The husband of the deceased, in his deposition, as could be seen in para 6, has spoken to this effect and which assertion is not seriously contested. Be that as it may, it needs to be noticed that the Insurance Company having taken the above noted plea, it was its onus to discharge that plea by substantive legal evidence. We do not find any evidence adduced by the Insurance Company to hold that the deceased was traveling as a passenger. The Insurance Company has utterly failed to substantiate the plea taken by it in the pleading. There is no failure of justice. The appeal is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge